

	Portales Police Department Standard Operating Procedure & Policy	SOP #	102.04
		Date Revised:	
		ADM. #	02.04
1700 N. Boston St. Portales NM, 88130	Arrests	Effective Date	
(575) 356-4404		Approval:	Pat Gallegos, Chief of Police

I. POLICY

- A. Short of the application of force, an arrest is the most serious action an officer can undertake. An arrest can cause repercussions throughout a person's life, even if he or she is eventually found not guilty or never brought to trial. The most important legal question facing an officer at the moment of an arrest is the existence of probable cause. Without probable cause the arrest is illegal and the evidence of criminality that was obtained because of the arrest is inadmissible. Officers shall accordingly exercise critical judgment in making arrests. Critical judgment includes consideration for bystanders, the time, place, and location of offenses, and the use of force in making the arrests. Officers shall consider alternatives to arrest consistent with their law enforcement mission.

II. PURPOSE

- A. To define the authority of officers to arrest and the mechanism for making arrests with and without a warrant.

III. DEFINITIONS

- A. Arrest: An arrest is a seizure of a person. An arrest is supported by probable cause. Generally, according to Fourth Amendment cases, the test of whether an arrest has taken place is whether a reasonable person under the circumstances would have felt free to leave.
- B. Probable cause: According to the Supreme Court, "probable cause exists where the facts and circumstances within their [the arresting officer's] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been or is being committed" and that the person to be arrested committed it.
1. An officer must have probable cause to make an arrest.
 2. The aim of probable cause is to make a formal charge. When an officer has probable cause, he or she may undertake a complete body search, record the suspect's fingerprints, take the suspect's photograph, and jail him.

IV. DISCRETION

- A. Officers shall continuously demonstrate discretionary judgment. Discretion shall be applied reasonably and shall be guided by the oath of office, the limits of authority as established by law, the decisions and interpretations of the courts, the written orders of our department, and the oral instruction provided by field supervisors.
- B. Officers shall not make arrests based on or affected by a person's gender, sexual orientation, race, creed, color, general attitude, ethnicity or natural origin.
- C. Officers have five forms of discretionary authority when making arrests: no arrest at all, an informal resolution of the incident or problem, issuance of a summons, a full-custody arrest or issuance of a criminal citation.
 - 1. Informal resolutions take the form of referrals to other agencies, mediating agreements between two or more parties, or issuance of a warning. Informal resolutions are the least coercive of all enforcement measures and shall be applied when stronger enforcement methods are unnecessary or inappropriate under the circumstances.
 - 2. Issuance of a summons may be requested of the court or decided by the judge upon review of complaint.
 - 3. Criminal Citations may be issued for violations in accordance with NMSA 31-1-6.
- D. The decision to apply one or more enforcement methods must account for the totality of the circumstances and must be consistently applied.
- E. Supervisors shall review each arrest report to ensure that proper action was taken under the circumstances.

V. ARRESTS WITH A WARRANT

- A. Who may issue: An arrest warrant may be issued by any municipal, magistrate, or district judge, Probation Office, or Juvenile and Domestic Relations Court who has jurisdiction for the case.
- B. When it may issue; what to recite: Court rules provide that the person having authority to issue an arrest warrant shall first examine on oath any complainant or other witnesses and, if probable cause exists, issue the warrant. (Rule 5-208, 6-204, 8-203)

- C. What the warrant contains: a warrant commands the accused to appear before a judge or magistrate at a stated time and place. The warrant names the accused or gives a description if his or her name is not known, describes the offense and names the violation, and bears a judge's signature. The warrant contains the complaint and sworn statements from witnesses.
- D. Issuance of a summons instead of warrant: Court Rule 5-208 provides for issuance of a summons instead of a warrant. Summonses impose the same requirements to appear at an appointed place and time as with a warrant.
- E. Issuance and service of summons in place of warrants in misdemeanor cases.
1. Officers may request that the court issue summonses for offenses committed in their presence when the offenses violate local ordinances.
 2. Persons to whom summonses have been issued shall not be held in custody until after an adjudication of guilty. Booking procedures at the time of a physical arrest, however, allow the taking of fingerprints or photographs.
 3. Any person refusing to give a written promise to appear under the provisions of this section shall be taken without unnecessary delay by the arresting or other officer before a magistrate or other appropriate issuing authority.
- F. Copy of process to be left with accused:
- Criminal procedures require that in most circumstances the officer shall leave a copy of the criminal process with the person charged.
- G. Execution of arrest warrants:
1. NMSA 31-1-4 authorizes a law enforcement officer to execute within his jurisdiction a District or Magistrate warrant, or summons issued anywhere in New Mexico. Municipal court actions may be served within the courts jurisdiction, except for DWI actions which may be served anywhere in New Mexico.
 2. NMSA 31-1-5 requires an officer who arrests a person on a warrant from another jurisdiction to take the arrestee without unnecessary delay to an appropriate judicial officer serving our locality.
- H. Escape, flight, and pursuit: Arrest anywhere in the state:
1. NMSA 29-1-4 allows an officer, with or without a warrant, to pursue within his jurisdiction an escapee from custody. If the officer is in close pursuit, he or she may arrest the suspect wherever he is found.

2. If the arrest is made in an adjacent county or city than the one from which the suspect fled, then the officer shall deliver him or her to the judicial authority of local jurisdiction.
3. NMSA 31-2-1 authorizes a law enforcement officer from any other state or the District of Columbia to pursue a fleeing felon into New Mexico and take the suspect into custody as if the suspect had committed a felony in New Mexico. Foreign officers shall without unnecessary delay take the arrestee to a local magistrate judge to determine the lawfulness of the arrest as required in NMSA 31-2-2.
4. NMSA 31-2-8 authorizes a Portales Police Officer whose jurisdictional boundary while in fresh pursuit of a misdemeanor whom he would otherwise have authority to arrest shall have the authority to arrest that misdemeanor anywhere within the state and return him to the jurisdiction in which the fresh pursuit began without further judicial process. (See OPR.01 .09)

I. Arrest of suspect inside dwelling:

- A. If an officer wishes to arrest a suspect inside his residence, he must first obtain an arrest warrant. If the residence belongs to the suspect, only an arrest warrant is required. If the dwelling belongs to someone else, the officer must obtain a search warrant as well.
 1. A search warrant is not required if the officer is in fresh pursuit or the owner of a residence consents to the officer's search for the suspect.

J. Return of warrant:

- A. Upon executing the warrant the arresting officer shall note the date of execution on it then return it to the court less copies given to the arrested person.

VI. ARREST WITHOUT A WARRANT

A. Authority:

As noted earlier, the search and seizure provision of the Fourth Amendment protects citizens from the arbitrary and oppressive interference by law enforcement officials with regard to privacy. Further, officers must have probable cause that a crime has been committed, and that the person to be arrested has committed the crime.

B. When warrantless arrests may be made:

To summarize, an officer may make a warrantless arrest

1. when a person commits any crime in the officer's presence;
2. when the officer has reasonable grounds or probable cause to suspect any person of having committed a felony not in his presence when exigent circumstances exists;
3. at the scene of any motor vehicle crash when the officer has reasonable grounds to believe, upon personal investigation, that a crime was committed by any person in their presence (66-8-125 NMSA);
4. at the scene of a domestic disturbance and has probable cause to believe that a crime was committed (31-1-7 NMSA);
5. at any hospital or medical facility to which any person involved in a motor vehicle crash has been transported, provided the officer has reasonable grounds to believe, based upon personal investigation, that a crime has been committed by that person;
6. on a highway when charged with a theft of a motor vehicle; (66-8-125 NMSA)
7. when any person is charged with a crime in another jurisdiction and the officer has received:
 - a. a photocopy of a warrant;
 - b. a telegram;
 - c. a computer or facsimile printout; or
 - d. a radio, telephone or teletype message which gives the name or a reasonably accurate description of the wanted person and the crime alleged;
8. when the officer investigates the crimes of assault, battery, public affray, or criminal damage in a licensed liquor establishment and has probable cause to believe a crime was committed (30-3-6 NMSA);
9. when the officer has probable cause based upon a reasonable complaint of a misdemeanor not committed in the officer's presence involving shoplifting, or falsely obtaining services or accommodations, (30-16-23, 30-16-16 NMSA).

Other statutes:

10. Under NMSA 31-1-7, officers may arrest without a warrant in cases of assault and battery against a family or household member and NMSA 40-13-6 for violations of protective orders, regardless of whether the violation occurred in the officer's presence, provided the officer has probable cause. [See OPR.13.01](#) domestic violence.

C. Actions upon arrest from charges filed in another jurisdiction:

1. Upon arrest based on a photocopy of the warrant, telegram, computer or facsimile printout, or teletype message, the arresting officer shall serve a copy of the document on the accused.
2. The arresting officer shall bring the accused before the magistrate for arraignment. 35-5-1 NMSA.
3. The magistrate shall conduct a bail hearing and set bail, or secure bond, if appropriate just as if the accused had been arrested on the warrant. The officer shall not request the issuance of any arrest process such as duplicate warrants or fugitive warrants based on the charge in the other jurisdiction within New Mexico.
4. The arresting officer shall contact the law enforcement officials where the charge was made and inform them that the accused has been arrested on the teletype message (or other arrest document), and if not bonded, ascertain when a representative will arrive to transfer the accused back to the locality having trial jurisdiction.
5. NMSA 3 1-4-14 Fugitive from Justice - Arrest of a person may be made without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed. A complaint must be made against the accused under oath setting forth the grounds for arrest.

D. Juveniles:

Refer to [OPR.04.01](#) -[.04.05](#) concerning handling of juveniles.

E. Criminal Citations:

1. Per NMSA 3 1-1-6, an arresting officer may issue a citation to appear at a time and place specified in such citation whenever any person is detained by or in the custody of an arresting officer for:
 - a. any offense committed in the officer's presence which is a violation of any county, city ordinance, or for any petty misdemeanor offense.
2. If, after issuing a citation for (a) above, the suspect continues the unlawful act, then the officer shall without unnecessary delay take him or her before the appropriate judge.

3. If the officer believes that the suspect is likely to disregard a citation, or may cause harm to himself or another person, then the officer shall without unnecessary delay take him or her before the appropriate judge.
4. An NCIC check on any person to whom a citation will be issued will be completed before releasing him or her. In the event the NCIC check reveals a valid extraditable warrant the criminal citation shall not be issued and a physical arrest will be made on all charges.

VII. POST-ARREST PROCEDURES

A. Constitutional considerations:

Refer to [ADM.02.02](#) for a discussion of search guidelines and searches incident to arrest.

B. Releases on citations and mandatory arrest:

If the arrested person is not released on a citation or is charged with a felony, officers shall observe the following procedures:

1. Transport the suspect to the jail and begin booking process. Obtain case number from communications operator to be placed on the offense/incident report.
2. Obtain State Tracking Number (STN) to be attached to fingerprint cards, booking sheet, criminal complaints, and probable cause statement.
3. Complete a criminal complaint and probable cause statement for each adult charge. (Multiple charges may be on same form)
 - a. Magistrate Court requires the following paperwork:
 1. Criminal Complaint and Probable Cause statement and/or copy of the warrant.
 - b. Municipal Court requires the following paperwork:
 1. Criminal Complaint and/or copy of the warrant.
4. The officer needs to provide defendant with a copy of the criminal complaint or warrant and be advised of his bond which shall be set by the bond schedule provided by the appropriate court.

5. Subject is released to the appropriate Detention Facility.
6. The criminal complaint and probable cause statement must be submitted to the appropriate court during the next court business day to ensure compliance with the 48 hour arraignment rule.
7. If the court or the district attorney's office rejects the criminal complaint and probable cause statement and it is returned via the records department, the criminal complaint and probable cause statement is returned to the officer for immediate correction and resubmission, with copies to his/her immediate supervisor and to the Lieutenant who will ensure the criminal complaints are corrected and resubmitted in a timely manner. In the event the officer is on days off or leave, he/she will be called in to make the corrections and resubmit the amended criminal complaint and probable cause statement. The Lieutenant shall submit the amended criminal complaint to the court on behalf of the officer on the same date they are returned to the PD and corrected by the officer.
8. If the charges filed require that the criminal complaint and probable cause statement be submitted to the district Attorney's office for review, the officer shall submit a copy to the district attorney's office and all original criminal complaints and probable cause statements shall still be submitted to the appropriate court.
9. The subject will be transported to the appropriate court for arraignment in the event the subject does not post the required bond.

C. Injury before or during arrest:

If a person receives an injury before or during an arrest and either requests medical attention or, in the officer's judgment, medical attention is needed, officers shall transport the suspect or arrange for his or her transportation to the hospital for an examination before booking.

D. Post arrest procedures for defendants with Minor or Dependent Children:

1. Whenever it is safe to do so, the officer shall make the arrest away from the children or at a time when the children are not present.
2. When officers make an arrest, they shall inquire about the presence of children or other vulnerable individuals for whom the arrested adult has responsibility. If the arrest is made in a home environment, the officers should be aware of items which suggest the presence of children such as toys, clothing, formula, bunk beds, diapers, etc.
3. Whenever it is safe to do so, the officer shall allow the parent to assure his or her children that they will be provided care. If this is not safe or if the demeanor of the in-custody parent suggests this conversation would be non-productive, the officer at the scene should explain the reason for the arrest to the children in

- age-appropriate language and offer reassurances to the children that both the parent and the children will be taken care of.
4. When an arrest or search warrant is planned, the ages and likely location of the children shall be considered when determining the time, place and logistics of the arrest.
 5. If children are present at the arrest, or if the arrested parent indicates the children are or will be at home without an adult caretaker, the officer shall determine whether or not the other parent is available to care for the children. If not, the officer shall attempt to locate an adult relative or adult fictive kin (a person not related by birth or marriage who has an emotionally significant relationship with a child) who is willing to take responsibility for the children. Preliminary criminal background checks of the alternate caregiver shall be completed. Any history of sexual crimes or violence against children shall make the adult ineligible to assume custodial care.
 6. Prior to placing any child with an adult other than the non-arrested parent, the officer shall check with CYFD State Centralized Intake (SCI) for information on any child abuse or neglect history of the potential caregiver. The number is 1-800-797-3260 (Statewide) or 841-6100 (Albuquerque). SCI staff has a duty to verify the identity of the law enforcement officer.
 7. If the non-arrested parent is not available, and the officer is unable to identify another adult to care for the children, protective custody maybe necessary. SCI will notify the CYFD worker on-call and the CYFD worker will ask any officer placing a child into protective custody to sign a "Statement of Reasonable Grounds for Emergency Custody."
 8. If the children are currently in school, the responding officer shall contact the school and shall advised the School Resource Officer (SRO), the school principal, or the principal's designee of the parents arrest and his/her stated preference for placement.
 9. The reporting officer shall include in his/her report:
 - a. The names and contact information for the adults with whom a child is left;
 - b. The name of any CYFD workers or school personnel contacted;
 - c. The names and contact information for any family members identified whether or not the children are placed with them; this information is crucial for CYFD workers if future placement becomes necessary.

E. Processing of paperwork:

1. Offense/Incident reports
 - a. Must be completed in Capers by officer prior to conclusion of shift unless approved by supervisor.
 - b. Report will be reviewed and approved by supervisor. Supervisor will approve all reports in a timely manner.
 - c. Reports become a permanent record of the Portales police Department.

2. Arrest/booking forms

- a. Must be completed by the arresting officer when defendant is brought into the detention center.
- b. Supervisor will approve and turn into records division.
- c. Records will send one copy to the appropriate court and the final copy will be placed in a permanent file.

3. Copies of warrant

- a. Once the defendant has been arrested and booked into the detention facility the officer shall provide the defendant a copy of the warrant.
- b. The officer shall provide the detention facility a copy of the warrant.
- c. The officer shall turn in a copy of the warrant to the supervisor.
- d. The officer shall return the signed original warrant to the communications operator who will return it to the appropriate court.
- e. The supervisor will forward the copy of the warrant to the records division.
- f. The records division will scan the copy of the warrant into the permanent file.

In the case of juvenile offenders see [OPR.04.01-OPR.04.05](#)

VIII. RELEASE FROM ARREST

A. Legal background:

1. Officers may encounter a circumstance where probable cause develops to arrest a person for an offense, only to find out shortly thereafter that the person under arrest did not commit a crime, or that the event was not a crime. It is imperative, then, that the officer ends the arrest process immediately to avoid becoming liable for false imprisonment.

B. Procedure:

1. If the arresting officer determines that probable cause no longer exists to arrest a suspect, and the officer is satisfied that the person under arrest either did not commit the crime or that the crime did not occur, then the officer shall notify his supervisor immediately.
2. The supervisor will report the incident to a command level supervisor.
3. The District Attorney's Office will be notified as soon as possible.
4. The defendant will be released on Own Recognizance with the authority of the judge.
5. The District Attorney's Office and the Officer will prepare notice of dismissal paperwork.
6. When an officer releases a subject from arrest, he or she shall return the person to the place of the arrest. The officer shall not release the person along the roadside. If a vehicle has been towed, the vehicle shall be returned to the operator/registered owner.
7. To protect him/herself and the department, the officer shall document in an incident report all of the following:
 - a. the date and time of arrest;
 - b. the person arrested (name, address, date of birth, race);
 - c. the location of arrest;
 - d. the location and time of release from arrest and whether the person was transported;
 - e. the reasons or discovery of information which led the officer to release from arrest;
 - f. any witnesses to the alleged crime, or to the fact the person arrested was allegedly involved.

8. If the officer makes an arrest based on probable cause, the arrest is lawful. Probable cause must continue to exist through the appearance of the officer and arrested person before the magistrate. If not, the defendant must be released as soon as practicable.